

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

Date:

EIN:
Key District:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under this section. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED] in the State of [REDACTED]. You were created by [REDACTED], who is a member of your Board of Directors. Your primary purpose is to provide financial support, through quarterly grants, to area churches and other organizations that assist individuals who are needy. In a letter dated, [REDACTED] you stated the primary beneficiary of your grants will be the [REDACTED]. Your primary activity will be to conduct bingo to raise funds to donate to the selected charity.

In a letter dated [REDACTED] you stated that you had discovered that the State would not allow a charity that had not been in existence for less than two years to sponsor bingo games. Therefore, you entered into a contract with another charity that would give you [REDACTED] of its bingo proceeds for two years. You did not provide a copy of the contract or any other information regarding the contents of the contract.

During the interim period before you qualify to sponsor bingo, [REDACTED] will be involved in the operation of bingo for another charity. You stated that it was during the process of searching for tenants for a facility owned by [REDACTED], that he discovered that bingo operations were profitable but that most of the charitable sponsors received very little of the operating profits. He felt that he could accomplish two goals if he were able to act as the promotor - (1) secure a fair rental for his

[REDACTED]

building, and (2) return to a charity the bulk of the operating profits as intended under the State law.

Once you qualify as a bingo sponsor, [REDACTED] will manage your bingo activities. You intend to rent the bingo facility which is owned by [REDACTED] at the same rate and to use the same personnel being used during the interim period. You provided an unsigned and undated lease between you and [REDACTED] for a 4,000 square foot building to be used for the purpose of conducting bingo games. The rent is [REDACTED] per year [REDACTED]. You will pay all utilities and repairs. You did not provide any information to indicate if the rent is at fair market value.

Also, per an unsigned and undated agreement, you will pay a fee of seventy (70%) percent of the net revenues of the bingo operation for services rendered to [REDACTED] who will be the [REDACTED]. Net revenues are defined as gross income from the bingo operation, less (a) all bingo prize money paid out, (b) State head tax and bingo gross receipts tax, and (c) all necessary and reasonable bona fide expenses incurred in connection with the conduct of the games, to personnel and promoters managing and conducting the game. There is no limit on the revenues that may be paid to [REDACTED].

You anticipate using 7 to 8 employees to conduct the three bingo sessions per week. All will be compensated on an hourly basis. No volunteers will be used. An operator will be sought to run the canteen.

At the present time, [REDACTED] owns the required Bingo equipment. You stated that once you qualify to sponsor bingo, a fair rental value will be determined.

[REDACTED] and [REDACTED] are the members of your Board of Directors. [REDACTED] appointed the Directors to the Board. None will receive compensation for their services as a Board member. [REDACTED] is an employee of [REDACTED]. Both [REDACTED] and [REDACTED] will be employed by you once bingo becomes operational and will be compensated on an hourly basis for services rendered. You stated there is no need for a Conflict of Interest Statement as [REDACTED] will be responsible to see that your charitable purpose is accomplished.

You provided the following financial information:

Gross income (bingo):
less, bingo prizes
less, drawing prizes
less tax

[REDACTED]

[REDACTED]

[REDACTED]

Net Revenue for operating &
charitable purposes: [REDACTED]

Expenses:

Contributions
Salaries
Occupancy
Other
Fundraising

[REDACTED] [REDACTED]

You did not list compensation for your officers, directors, and trustees, as is required. Nor did you describe your other expenses.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations which are organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that an organization must be both organized and operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code in order to be exempt as an organization described in such section.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it is engaged primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provide that an organization is not operated exclusively for one or more exempt purposes, if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words "private shareholder or individual", see paragraph (c) of section 1.501(a)-1.

Section 1.501(c)(3)-1(d)(ii) of the regulations states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator, shareholders, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(e) of the regulations states that an organization may be exempt under section 501(c)(3) even though it operates a trade or business as a substantial part of its activities if the operation of such trade or business is in furtherance of the organization's exempt purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the facts and circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3).

Section 513(f) of the Code provides that the term "unrelated trade or business" does not include the conduct of certain bingo games. Section 1.513-5(f) of the regulations states that section 513(f) of the Code and the regulations thereunder apply to taxable years beginning after December 31, 1979. House Report No. 95-1608 2nd Session, 1978-2 C.B. 395 (397) states in pertinent part:

The Committee does not intend that the carrying on of bingo games should be treated as an exempt function of a . . . tax exempt organization except to the extent it would be considered as an exempt function under present law. Also, the committee does not intend to revise the rules of present law which indicate that if conducting bingo is a primary activity of an organization, the organization may not qualify for tax exemption.

Thus, although section 513(f) of the Code excludes income from certain bingo games from the computation of unrelated business taxable income, as indicated by the legislative history of this provision, section 513(f) was not intended to result in exemption for organizations whose primary activity is the conduct of bingo. Bingo remains an activity unrelated to exempt purposes and alone cannot support exemption under section 501(c)(3).

Rev. Rul. 64-182, 1964 (Part 1)-1 C.B. 186, describes an organization that derived its income principally from the rental of space in a large commercial office building that it owned, maintained, and operated. The revenue ruling holds that the organization meets the primary purpose test of section 1.501(c)(3)-1(e) of the regulations because its charitable contributions are commensurate in scope with its financial resources and are in furtherance of its exempt function.

[REDACTED]

In Rev. Rul. 67-5, 1967-1 C.B. 123, the Service held that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities that were beneficial to them, but detrimental to the foundation. This resulted in the foundation's ownership of non-income producing assets which prevented its carrying on a charitable program commensurate in scope with its financial resources. The ruling concludes that the foundation was operated for a substantial non-exempt purpose and served the private interest of the creator and his family and therefore was not entitled to exemption under section 501(c)(3) of the Code.

KJ's Fund Raisers, Inc. v. Commissioner, T.C. Memo. 1997-424, September 22, 1997, held an organization raising funds to support bowling leagues was not exempt as it operated for the private benefit of the owners of the facility where the pull tabs were sold as the owners had substantial control over the operation of the organization.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court was called on to decide whether benefit to third parties, who were not members of the organization, would prevent the organization from being recognized as an exempt organization within the meaning of section 501(c)(3) of the Code. The Court concluded that the organization could not confer benefits on disinterested persons and still serve public purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), the Tax Court concluded that an organization that raised funds for charity by conducting bingo games in a bar owned by the organization's directors had the substantial private purpose of making food and beverage sales for the benefit of the bar's owner. On this basis, the Court concluded that the organization could not qualify for exemption under section 501(c)(3).

Better Business Bureau v. United States, 316 U.S. 279 (1945), holds that the existence of a single non-exempt purpose, if substantial in nature, will destroy the exemption under section 501(c)(3). An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such purposes.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational

[REDACTED]

test is a question of fact. See also Christian Stewardship Assistance, Inc. v. Commissioner, 69 T.C. 1037, 1042 (1978).


The conduct of bingo games on a regular basis is not, in itself, an exempt activity as the term is defined by the applicable Code and regulations provisions. An organization may, however, be exempt under section 501(c)(3) where its sole source of support is from gaming activities, if it accomplishes exclusively charitable purposes by raising funds through such activities to support charitable organizations. This form of indirect support of charity is itself a charitable activity justifying exemption under section 501(c)(3) if it is commensurate in scope with the organization's resources. See Rev. Rul. 64-182.


You are not engaged in any activities. You have entered into a contract with another organization to operate bingo on your behalf. Your budget projections indicate that less than 12% of your gross revenues will be given to charity. The information provided indicates that all of your Directors will receive compensation from you, either directly or indirectly. Your Directors also may set their own compensation. You intend to rent your bingo facility and your bingo equipment from a Director as well as hire the same Director to be your bingo promotor. There are no independent controls over your revenue making activity nor on your spending.

The inurement proscription in section 1.501(c)(3)-1(c)(2) of the regulations states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of a private shareholder or individuals. The members of your Board of Directors are "insiders" for the purpose of determining whether there is inurement of income as they exercise control over the organization. In fact, you stated that [REDACTED], your founder, will be responsible for ensuring funds are used for charitable purposes. [REDACTED] has unlimited authority over you. He also has substantial control over one of your Directors as he is that Director's employer. [REDACTED] appointed your Board of Directors. You will pay 70 percent of your net revenues to [REDACTED]. Funds inuring to the benefit of insiders are not used for public benefit. See Rev. Rul. 67-5, P.L.L. Scholarship Fund, supra, and Better Business Bureau, supra.

Your founder, [REDACTED] formed you when he was looking for a tenant for his facility and determined a bingo facility was profitable. You also submitted copies of a proposed agreement that confers substantial benefit on [REDACTED] for his services as bingo promotor. Under the agreement, he will receive 70% of the net income from the bingo operation. There is no limit on the

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You will expedite our receipt of your reply by using the following address on the envelope:


Sincerely yours,

